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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

NETALI NISSIM 1800, INC., Plaintiff, v. RUBY STELLA INC., RUBY SAAYED and STELLA SAAYED. Defendants.	Civil Action No. COMPLAINT DEMAND FOR JURY TRIAL

Plaintiff, NETALI NISSIM 1800, INC, by and through its attorneys, Garson Segal Steinmetz Fladgate LLP, as and for its Verified Complaint against defendants, RUBY STELLA, INC., RUBY SAAYED, and STELLA SAAYED, and respectfully alleges as follows:

THE PARTIES

1. Plaintiff NETALI NISSIM 1800, INC. ("Plaintiff" or "NN") is a corporation duly organized and existing under the laws of the State of New Jersey, having a principal address located at 900 Highway 9, Suite 201, Woodbridge, NJ 07095. Netali Nissim, an individual of Israeli citizenship and Milanese origin, is a jewelry designer who specializes in the in the design and manufacture of elegant

and modern jewelry for over two decades. NN is the exclusive licensee of the Netali Nissim intellectual property rights detailed herein.

2. Upon information and belief, Defendant RUBY STELLA, INC.. ("Ruby Stella") is a corporation organized under the laws of the State of California, having a principal place of business located at 606 S Hill St., Ste. 713, Los Angeles, California 90014. According to their website, www.rubystella.com, RS was launched in 2013 by sisters and co-defendants, Ruby and Stella Saayed, and specializes in jewelry design aimed at women.

3. Upon information and belief, Defendant RUBY SAAYED is an individual residing in the State of California and is a principal owner and designer of Defendant Ruby Stella.

4. Upon information and belief, Defendant STELLA SAAYED is an individual residing in the State of California and is a principal owner and designed of Defendant Ruby Stella.

5. Upon information and belief, at all relevant times, defendants Ruby Saayed and Stella Saayed were the principal owners of defendant Ruby Stella.

6. Upon information and belief, at all relevant times, defendants Ruby Saayed and Stella Saayed directly profited from the conduct alleged herein.

7. Upon information and belief, at all relevant times, defendants Ruby Saayed and Stella Saayed were and remain the active and conscious force behind Ruby Stella's trademark and copyright infringement.

8. Defendants Ruby Stella, Ruby Saayed, and Stella Saayed are hereafter referred to collectively as "Defendants" or "Ruby Stella".

JURISDICTION AND VENUE

9. Plaintiff re-alleges paragraphs 1 through 8 as if fully set forth herein.

10. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. §§ 133, 1338(a) and 1338(b), 17 U.S.C. Sections 106, 113 & 501 through 505, and 15 U.S.C. § 1121.

11. This Court has general personal jurisdiction over Defendants as they conduct systematic and continuous business within the State of New Jersey.

12. This Court has specific Jurisdiction over Defendants given that the infringed products originate from the State of New Jersey and are related to the State of New Jersey, and Defendants have purposefully availed themselves of the State of New Jersey.

13. Venue is proper in this judicial district pursuant to 28 U.S.C. Sections 1391(d) and 1400 as Defendants' contacts with the district are sufficient to subject them to personal jurisdiction, a substantial part of the events giving rise to the claims herein occurred in this district, and the matter involves acts of copyright infringement.

FACTUAL BACKGROUND

THE PROTECTED WORKS

14. Plaintiff re-alleges paragraphs 1 through 7 as if fully set forth herein.

15. Netali Nissim ("Nissim") an individual of Israeli citizenship, currently residing in the State of New Jersey in the United States, is a jewelry designer with an expansive portfolio of intellectual property rights relating to her various jewelry

designs and related business endeavors. Included among Nissim's portfolio are the rights underlying the instant action.

16. In or about 2004, Nissim first published her evil eye design in conjunction with the sale of jewelry, including, without limitation, necklaces, bracelets, ear rings, and rings (the "Evil Eye Design").

17. Also in or about 2004, Nissim first published her jewelry design for her evil eye ring (the "Evil Eye Ring").

18. In or about 2009, Nissim made an application to the United States Copyright Office (the "Copyright Office") to register the Evil Eye Ring. On or about August 20, 2009, the Copyright Office granted Nissim's application and issued a certificate of registration for the Evil Eye Ring, registration number: VA0001682318 (the "Evil Eye Copyright"). A true and correct copy of the Evil Eye Copyright certificate of registration and the Copyright Office catalogue entry evidencing the registration of the Evil Eye Copyright is annexed hereto as **Exhibit A**.

19. On or about November 5, 2014, Nissim made an application to the United States Patent and Trademark Office (the "USPTO") to register the Evil Eye Design in International Class 14 for jewelry, serial number: 86-445,763. On or about March 15, 2016, the USPTO granted Nissim's application and published the Evil Eye Design for registration, registration number: 4,916,798 (the "Evil Eye Trademark"). A true and correct copy of the Evil Eye Trademark registration is annexed hereto as **Exhibit B**.

20. The Evil Eye Trademark is registered on the principal register, and the mark consists of "the three dimensional configuration of a feature of jewelry in the shape of an eye. The eye is an elliptical design with small circles representing

the jewels running around the ellipse. In the middle of the ellipse are concentric circles comprising the iris and pupil of an eye." (Exhibit B).

21. In or about 2016, Nissim made an application to the European Union Intellectual Property Office ("EUIPO") to register the Evil Eye Design for a European Union trademark of the Evil Eye Design. On or about March 15, 2017, EUIPO issued a certificate of registration for the Evil Eye Design, No. 015575759 (the "Evil Eye EUIPO Trademark"). A true and correct copy of the EUIPO certificate of registration is annexed hereto as **Exhibit C.**

22. The Evil Eye Copyright, the Evil Eye Trademark and the Evil Eye EUIPO Trademark are collectively referred to hereafter as the "Nissim Intellectual Property".

23. Nissim is the exclusive owner of the Nissim Intellectual Property.

24. At all relevant times, NN was (and remains) the exclusive licensee of the Nissim Intellectual Property.

25. Both Nissim and NN take the intellectual property rights inherent to the Nissim Intellectual property, and the duty to police and vigorously protect those rights against dilution and unfair competition, seriously.

ACTS OF INFRINGEMENT

26. In or about March 2017, Plaintiff, by way of Defendants' postings on the social media application Instagram®, became aware that Defendants were making use of the Nissim Intellectual Property in the design, marketing, sale and distribution of products identical to those of Plaintiff (the "Infringing Items") in violation of Plaintiff's exclusive intellectual property rights. True and correct copies

of the Defendants' Instagram® posts showing the Infringing Items are annexed hereto as **Exhibit D**.

27. Defendants have misappropriated the Nissim Intellectual Property and have modeled their jewelry products on those designs developed by Nissim and marketed and sold by NN pursuant to an exclusive license agreement.

28. The Infringing Items are unambiguous reproductions and clear facsimiles of the Nissim Intellectual Property.

29. The similarity of the copyrighted and trademarked material of Nissim and NN on the one hand, and the jewelry sold by Defendants on the other hand, creates confusion of consumers familiar with authentic products bearing the Nissim Intellectual Property, and such consumers will believe in error that Defendants' jewelry products originate from the same source, or are licensed or otherwise sponsored by Nissim or NN.

30. Both Plaintiff and Defendants sell their products through many of the same channels, increasing the likelihood of confusion in consumers' minds.

31. Defendants have impinged on designs developed by Nissim and licensed exclusively to NN and have negatively impacted Nissim and NN's ability to negotiate with other jewelry companies and retail outlets to contract for the sale of items bearing the Nissim Intellectual Property, thereby compromising Plaintiff's ability to fully control the use of its trademarks, copyrights, designs and works.

32. The Nissim Intellectual Property is and has been famous since long prior to the commencement of Defendants' activities complained of herein.

33. Upon information and belief, Defendants' infringing use of the Nissim Intellectual Property extends beyond the Infringing Items.

34. Subsequent to the manufacture and branding of certain of the Infringing Products, Defendants made the Infringing Products available for purchase to consumers at its various locations including its website, www.rubystella.com, as well as in retail stores such as Bergdorf Goodman, Inc. ("Bergdorf Goodman").

35. At no time did Plaintiff or Nissim grant permission or authority to Defendants to edit, alter, or otherwise make use of, the Nissim Intellectual Property.

36. On or about April 3, 2017, counsel for Plaintiff issued correspondence to Defendants informing it of its violation of, *inter alia*, title 17 U.S.C. §§ 501, *et. seq*., by virtue of its unauthorized alteration, use and dissemination of the Infringing Products and requesting the cessation of all sales of the Infringing Products.

37. Also on or about April 3, 2017, counsel for Plaintiff issued correspondence to Bergdorf Goodman via its parent company, the Neiman Marcus Group, Inc., informingof Ruby Stella's violations of Plaintiff's rights and requesting that Bergdorf Goodman cease sales of the Infringing Products.

38. On or about April 13, 2017, counsel for Plaintiff received correspondence from The Neiman Marcus Group, Inc. informing Plaintiff that Bergdorf Goodman did not design or manufacture the Infringing Products in question, and announcing its decision to remove all items produced by Defendants from Bergdorf Goodman stores and website.

39. On or about April 17, 2017, counsel for Plaintiff received correspondence from counsel for Defendants. Defendants' counsel made hollow and unsubstantiated claims concerning Nissim and NN's endeavors to protect or prevent misleading use of the Nissim Intellectual Property, and threatened retaliatory action should Plaintiff seek to further enforce its properly-held rights at law.

40. As of the date of filing, the Infringing Products remain on Defendants' website and Instagram® account and remain available to purchase.

41. By editing, making use of, and deriving profits from the Nissim Intellectual Property, Defendants acted with, at least, reckless disregard of Plaintiff's exclusive rights as provided by the Copyright Office and pursuant to the Copyright Act, Plaintiff's exclusive rights as provided by the USPTO and pursuant to the Lanham Act, and Plaintiff's exclusive rights as provided by EUIPO.

COUNT I
(COPYRIGHT INFRINGEMENT)

42. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 41 as if fully set forth herein.

43. Defendants have violated the exclusive copyright rights of Plaintiff by publishing, altering, editing, and making use of the Nissim Intellectual Property and publishing said Nissim Intellectual Property without the permission or authority of Plaintiff or Nissim.

44. Plaintiff has complied in all respects with the United States Copyright Act, including 17 U.S.C. § 408 and all other laws respecting copyright by first publishing the Nissim Intellectual Property on its own website, periodicals, and

marketing materials, and thereafter applying and receiving copyright registrations for the Evil Eye Ring.

45. Plaintiff caused Defendants to be on actual and/or constructive notice of Plaintiff's copyright ownership of the Nissim Intellectual Property.

46. Notwithstanding Defendants' notice and knowledge of Plaintiff's rights and without Plaintiff's permission or authority, Defendants have reproduced, copied, used, derived profits from, disseminated and digitally manipulated and/or altered the Nissim Intellectual Property. Upon information and belief, Defendants continue to do so.

47. Defendants' acts of infringement have been willful, wanton, knowing and in bad faith.

48. Defendants actions constitute copyright infringement in violation of Plaintiff's rights under 17 U.S.C. § 501 *et seq*.

49. The unauthorized and infringing use by Defendants of Plaintiff's copyrighted materials has and will continue to, unless enjoined, cause irreparable harm, damage and injury to Plaintiff. Moreover, Defendants have unlawfully and wrongfully derived and will continue to derive income and profits from their infringing activities.

COUNT II
(TRADEMARK INFRINGEMENT)

50. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 49 as if fully set forth herein.

51. Use by Defendants of the Nissim Intellectual Property, and particularly the Evil Eye Trademark and the Evil Eye EUIPO Trademark as a mark on and in connection with the Infringing Property and in the marketing and advertising thereof, is likely to cause confusion with the Nissim Intellectual Property given the close similarity between the marks and the related nature of the goods.

52. Members of the public who see the Infringing Property are likely to believe in error that Defendants' goods are made or under license of Nissim or NN or the Defendants' products are a line extension of the NN brand.

53. Use by Defendants of the Nissim Intellectual Property in the Infringing Products and the marketing and advertisement thereof, is likely to cause confusion, mistake, and deception among the relevant public and trade as to the source or sponsorship of Defendants' goods and business and as to the affiliation of Nissim and NN with Defendants, causing harm to Plaintiff's business, reputation and goodwill, as well as harm to the public.

54. Neither Nissim nor NN has consented directly or indirectly to use by Defendants of the Nissim Intellectual Property in connection with the Infringing Products, or the marketing or advertising thereof.

55. The activities of Defendants complained of herein constitute trademark infringement of the Nissim Intellectual Property in violation of Lanham Act, 15, U.S.C. § 1114, to the substantial and irreparable injury of Plaintiff's business, reputation and goodwill.

56. Plaintiff has no adequate remedy at law. The said conduct of Defendants have caused and, if not enjoined, will continue to cause, irreparable harm to Plaintiff.

57. Plaintiff has sustained, and will sustain, damages from the aforesaid unlawful actions of Defendants, in an amount to be determined at trial.

COUNT III
(UNFAIR COMPETITION – FALSE DESIGNATION OF ORIGIN)

58. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 57 as if fully set forth herein.

59. Defendants' use of the Nissim Intellectual Property in conjunction and with the sale of the Infringing Products, and in the marketing and advertising thereof, constitutes a false designation of origin or sponsorship which is likely to deceive purchasers, prospective purchasers, and members of the relevant trade and public, into believing that products of Defendants are those of Plaintiff, or products authorized or approved by Plaintiff, or are sold by an affiliate of or under license from Nissim or NN, in violation of 15 U.S.C. § 1125(a).

60. Such use of the Nissim Intellectual Property by Defendants falsely suggests that Defendants are entities affiliated with Plaintiff, or that their products are the same as the products of Plaintiff, or that their products are produced under license or in association with Plaintiff, or that Defendants are an authorized agent of Nissim or NN, all of which constitute false or misleading representations of material fact in violation of 15 U.S.C. § 1125(a).

61. Plaintiff does not and cannot exercise control over the nature and quality of the products provided by Defendants under a mark and design that is confusingly similar to the Nissim Intellectual Property.

62. The activities of Defendants complained of herein constitutes false designation of origin in violation of 15 U.S.C. § 1125(a).

63. Plaintiff has no adequate remedy at law. The conduct of Defendants complained of herein has caused, and if not enjoined, will continue to cause, irreparable harm to Plaintiff.

64. Plaintiff has sustained and will continue to sustain substantial damages from the aforesaid unlawful actions of Defendants, in an amount to be determined at trial.

COUNT IV
(UNFAIR COMPETITION – FALSE ADVERTISING)

65. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 64 as if fully set forth herein.

66. The aforesaid acts of Defendants constitute false advertising in violation of 15 U.S.C. § 1125(a).

67. Plaintiff has no adequate remedy at law. The conduct of Defendants complained of herein has caused, and if not enjoined, will continue to cause, irreparable harm to Plaintiff.

68. Plaintiff has sustained and will continue to sustain substantial damages from the aforesaid unlawful actions of Defendants, in an amount to be determined at trial.

COUNT V
(TRADEMARK DILUTION)

69. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 68 as if fully set forth herein.

70. The Evil Eye Trademark and the Evil Eye EUIPO Trademarks used by Plaintiff are famous in the markets and channels through which they are sold, including the jewelry markets, and attained such fame prior to use by Defendants.

71. Use of the Nissim Intellectual Property by Defendants on or in connection with jewelry and the marketing and advertising thereof, diminishes and dilutes the distinctive quality of the Nissim Intellectual Property used and registered by Nissim and licensed exclusively to NN in the jewelry industry.

72. The conduct of Defendants described herein and in the preceding causes of action in this Complaint dilutes and will continue to dilute the distinctive quality of the Nissim Intellectual Property and so causes and will cause irreparable damage to the Nissim Intellectual Property, in violation of 15 U.S.C. § 1125(c).

73. Plaintiff has no adequate remedy at law. The conduct of Defendants complained of herein has caused, and if not enjoined, will continue to cause, irreparable harm to Plaintiff.

74. Plaintiff has sustained and will continue to sustain substantial damages from the aforesaid unlawful actions of Defendants, in an amount to be determined at trial.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury on all jury-triable matters and issues presented herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff NETALI NISSIM 1800, INC. respectfully requests judgment against Defendants RUBY STELLA, INC., RUBY SAAYED and STELLA SAAYED, as follows:

i. That Defendants' conduct as described herein constitutes:

a. copyright infringement, in violation of the Copyright Act of 1976, 17 U.S.C. § 501;

b. trademark infringement, in violation of the Lanham Act, 15 U.S.C. § 1114;

c. unfair competition in the nature of false advertising and false designation of origin and representations, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); and

d. trademark dilution, in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1225(c)'

ii. That individual defendants RUBY SAAYED and STELLA SAAYED, as well as RUBY STELLA, INC., its officers, directors, agents, servants, employees, attorneys, related companies, licensees, and all persons acting for, with, by, through, and under them, be enjoined:

a. from using the Nissim Intellectual Property as a mark or component of a mark or in connection with jewelry or other artwork not originating from Plaintiff or otherwise authorized by Nissim;

b. from committing any act calculated or likely to cause purchasers, potential purchasers, or members to the relevant trade or public to believe that the business or goods of Defendants are sponsored, authorized, or otherwise approved by Plaintiff, unless they are such;

c. from using in any manner the Nissim Intellectual Property, or any other false designations of origin, false or misleading representations, or otherwise commit any other acts of unfair competition or deceptive or unlawful trade practices, which may imply or lead the public to believe that a product or service not originating with Plaintiff is Plaintiff's product or that Defendants' goods are in any way sponsored, affiliated, approved, licensed or authorized by Nissim or NN;

d. from doing any other act which may, or is intended or designed or calculated to dilute, tarnish or disparage the distinctive quality of the Nissim Intellectual Property or the reputation of Plaintiff; and

e. from directly or indirectly copying, reproducing, manufacturing, promoting, advertising, distributing or selling promotional materials, packaging labels, advertising brochures, sale displays, and other material associated for their jewelry or other work which infringe upon the Nissim Intellectual Property.

iii. That Defendants pay to Plaintiff damages or statutory damages pursuant to 15 U.S.C. § 1117(c)(2), in consequence to the willful nature of Defendants' use of the Nissim Intellectual Property in connection with goods sold, offered for sale, or distributed;

iv. That Defendants pay to Plaintiff such damages as Plaintiff has sustained in consequence of the copyright infringement by Defendants, and to authorize and pay to Plaintiff all gains, profits, and advantages derived by Defendants from said copyright infringement.

v. That Defendants pay to Plaintiff such damages as Plaintiff has sustained in consequence of the unfair competition by Defendants, and to account for and pay to Plaintiff all gains, profits, and advantages derived by Defendants from said unfair competition;

vi. That Defendants pay to Plaintiff three times such profits or damages, whichever is greater, together with prejudgment interest, as a consequence of the willful nature of Defendants' unlawful conduct; and

vii. That Defendants be required to recall and destroy all Infringing Products not yet in the hands of ultimate purchasers, including but not limited to the Infringing Products, labels, advertising, promotional materials, packaging, and point of sale displays bearing the Nissim Intellectual Property;

viii. That Defendants pay to Plaintiff its reasonable attorneys' fees and full costs of this action pursuant to 15 U.S.C. § 1117.

ix. Such other and further relief as this Court deems just and equitable.

Dated: New York, New York
May 17, 2017

RESPECTFULLY SUBMITTED,
GARSON, SEGAL,
STEINMETZ, FLADGATE LLP
ATTORNEYS FOR PLAINTIFF

BY:

/S/
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CERTIFICATION PURSUANT TO LOCAL RULE 11.2

I, Michael Steinmetz, the undersigned attorney of record for Plaintiff, do hereby certify to my own knowledge and based upon information available to me at my office, the matter in controversy is not the subject of any other action now pending in any court or in any arbitration or administrative proceeding.

Dated: May 17, 2017

By:__________/s/__________________
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